IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9852 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARMENDRA @ SHERU BHAVARSINH CHHARA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 05.06.2003

passed by the Police Commissioner, City of Ahmedabad, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 05.06.2003.

2. The grounds served upon the petitioner and as placed on record indicate that the detaining authority relied upon the fact of registration of crimes against the petitioner, 4 in number, on 9.4.2003, 11.4.2003, 2.5.2003 and 30.5.2003 under Sections 66(b), 65(e), 81 and 85 of the Bombay Prohibition Act because on all the four occasions, separate quantity of country liquor was found in possession of the petitioner. The detaining authority further also relied upon the statement as recorded by the sponsoring authority on 3.6.2003 and as verified by the detaining authority on 4.6.2003, revealing the unreported incidents occurred on 10.5.2003 and 13.5.2003. From the above material, the order impugned came to be passed against the petitioner.

3. Learned Advocate Mr. MR Prajapati for Mr. HR Prajapati the petitioner and learned AGP Mr.R.M.Chauhan for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority and as placed on record by learned AGP is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, from rival contentions, it appears that the matter can be discussed and be disposed of on the sole ground whether the

subjective satisfaction of the detaining authority is vitiated by non-application of mind to the vital aspect of the matter. Undisputably, the grounds served upon the petitioner, clearly establishes that the petitioner was in judicial custody in all the four crimes registered against him under the Bombay Prohibition Act when order came to be passed and served upon the petitioner. The detaining authority came to the conclusion that in the above said four crimes, at any time, the petitioner was likely to move bail application and was likely to be released on bail and was likely to continue his illegal activities. He has further clarified in para-18 of the affidavit-in-reply that he was aware at the time of the

order of the detention that the petitioner was in judicial custody. But, looking to the activities of the petitioner - detenu and looking to the fact that the petitioner may at any point of time file bail application and be released by competent court and in view of the ratio laid down by the Apex Court in the matter of AHAMED NASSAR vs. STATE OF TAMIL NADU AND OTHERS, reported in (1999)8 SCC 473, with a view to maintain public order, the order of detention came to be passed and, therefore, it could not be said that there was non-application of mind to the vital aspect of the matter.

5. Having considered this contention raised on behalf of the respondents, it clearly appears that the ratio laid down by the Apex Court in Ahamed Nassar's case (supra) is not applicable to the facts of the present case because in the said case vide paras 46 and 47 the Apex Court, on the facts that case, made it clear that the detaining authority came to the conclusion as to releasing the detenu on bail on material placed before him. Therefore, the question is whether there was any material, moreover cogent material, to reach to the subjective satisfaction whether there was likelihood of the petitioner to be released on bail. The facts of the case are squarely covered by a decision of the Apex Court in that case of AMRUTLAL & ORS. vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. Accordingly, on going through the record and the grounds served, it is clear that there was no cogent material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue his illegal activities. Learned Advocate for the petitioner makes a statement that up-till-now, the petitioner neither moved any bail application nor he has been released on bail by the court. In this view of the matter, the order impugned is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 05.06.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair